

APPLICANTS:

**Barry Wohl; Dahlia Hirsch and
Shelter Development, LLC**

BEFORE THE

ZONING HEARING EXAMINER

**REQUEST: A special exception, pursuant
to Section 267-53F(7) of the Harford County
Code, to permit an assisted living facility**

FOR HARFORD COUNTY

BOARD OF APPEALS

HEARING DATE: September 28, 2005

Case No. 5498

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Barry Wohl and Dahlia Hirsch

CO-APPLICANT: Shelter Development, LLC

LOCATION: 128 West Ring Factory Road, Bel Air
Tax Map: 49 / Grid: 4C / Parcels: 255 and 360
Third (3rd) Election District

ZONING: R2 / Urban Residential District

REQUEST: A special exception, pursuant to Section 267-53F(7), of the Harford County Code, to permit an assisted living facility in an R2 District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant first testified David Carliner, who identified himself as the Senior Vice President for the Applicant, Shelter Development, LLC (sometimes hereinafter referred to as "Shelter").

Mr. Carliner, a Developer of Senior Housing for Shelter, describes Shelter as having been in existence for approximately 28 years, and is a developer and operator of residential housing. Within Harford County Shelter has developed and owns the Bright View senior housing community and the two Parkview senior housing communities. The present request is to develop the subject property as an assisted living facility.

Mr. Carliner identified Shelter as the contract purchaser of the subject property, which is an approximately 12.91 acre parcel located at the intersection of West Ring Factory Road and MD Route 24. Shelter's contract sale is contingent upon receiving the requested special exception approval.

Mr. Carliner described the project as being similar to Bright View at Bel Air, the Shelter development which is located directly across Route 24 from the subject site. The proposed assisted living facility will provide meals, transportation and assist with the every day living activities of its senior citizen residents.

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Mr. Carliner described the typical resident as being approximately 70 years old. Most residents will need assistance of some nature. The project will have 35 full-time equivalent employees. Employees will be on the property 24 hours a day, 7 days a week. Of the 35 full-time employees approximately 5 will be administrative employees, working standard 40 hours work weeks.

The residents are allowed to bring their cars, and approximately 50% of new residents bring their cars. However, the majority of the population drives only infrequently.

Shelter is interested in developing the proposed project as there is great demand for this type of housing in Harford County. Shelter now often turns down applications due to lack of space in its present Harford County facilities.

The subject property is a good site, according to Carliner. It is relatively large for the proposed use. It is close to major roadways, and it is close to Shelter's other community at Bright View.

The proposed project will have 214 beds, to be constructed in two phases. The existing pond will remain, as will most of the trees along MD Route 24 and Ring Factory Road. This existing tree growth will constitute a significant buffer, in Mr. Carliner's opinion. The facility will have a sign along Ring Factory Road. Access will be from Ring Factor Road as MD Route 24 is a denied access highway.

Mr. Carliner believes the traffic generated by the use will be minimal. Few employees will actually be working 9:00 a.m. to 5:00 p.m. shifts. The work schedules of most employees will be spread out over the work week. Furthermore, few residents will actually be using cars or have cars with them, and visitors usually come after dinner. While 54 parking spaces are required by Code, Shelter proposes 173 spaces. Shelter, however, is considering the reduction of on-site parking to 135 spaces by eliminating the last parking row on the far east side of the property.

Shelter has had a series of community meetings to discuss the project, as well as a few individual meetings. Mr. Carliner described the community's reaction as, for the most part, not necessarily in favor of the project, but the general feeling is that this use is preferable to other, more intensive residential townhouse or single family uses which could be developed on the subject property.

Mr. Carliner then identified and discussed renderings of the proposed facade of the assisted living facility. Shelter's intent is to create a residential feel, although the renderings discussed and exhibited are conceptual. These renderings were marked as Petitioner's Exhibit 6.

In summation Mr. Carliner believes the project will have little impact on the community. It is located off of a main artery. By nature it will be relatively quiet and compatible with surrounding uses.

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Next for the Applicant testified Torrence Pierce, civil engineer, who is Manager of Site Design and Civil Engineering for Frederick Ward Associates. Mr. Pierce was offered and accepted as an expert civil engineer.

Mr. Pierce discussed the shape and topography of the property. Mr. Pierce described the property as having a generally north to south orientation, with gradual increases in elevation from both the north and the south. There exist some wetlands on site. No access will be allowed from MD Route 24.

The storm water management facilities will be located on both the southern and northern ends of the property. Public water and sewer is available. The proposal complies with all land use regulations, according to Mr. Pierce.

Approximately 150 feet of woodland buffer will remain on the westerly side of the property. The existing house (which will be removed) is difficult to see except in winter. Mr. Pierce believes that the projected assisted living facility will only be visible during the winter time, and even then it will be screened to some extent by existing trees.

Mr. Pierce stated that the property is subject to a 50 foot minimum use setback. However, the setback on the easterly side will be somewhat disturbed in order to install the proposed parking area. The existing grade may be disturbed to a point located approximately 10 to 15 feet from the eastern property line. This would necessitate the removal of existing trees in that area.

Next for the Applicant testified Kenneth Schmid. Mr. Schmid identified himself as a traffic engineer employed by Traffic Concepts, Inc. Mr. Schmid was offered and accepted as an expert traffic consultant.

Mr. Schmid had been asked to prepare a traffic impact study of the proposed use, and he described the process of doing so. His first task was to attend a scoping meeting with Harford County Department of Planning and Zoning. At that meeting the scope of the study was established. The study itself was then designed. Harford County requested a study of nine (9) intersections, all of which are set forth in his study. Mr. Schmid then did counts of existing traffic flow, and then added developments planned but not yet developed. These projects were identified by Harford County. A growth rate was then applied to these findings, with the service levels of the various studied intersections calculated. Mr. Schmid then determined the impact of the proposed use.

Mr. Schmid has found that, generally, the type of facility proposed is a low generator of traffic. The employees come and leave at varying times of the day, and are not bunched up at any one time. Few of the residents will drive on a regular basis. Given his experience with other similar uses, Mr. Schmid anticipates little traffic to be generated by this use.

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Generally, during the a.m. peak hour Mr. Schmid expects to see 19 cars inbound, and 11 cars outbound. During the p.m. peak hour Mr. Schmid expects to see 21 cars inbound, and 26 cars outbound.

All intersections, according to Mr. Schmid, are required by the State to operate a level of service D, which allows 55 seconds of delay or less at signalized intersections, and 35 seconds of delay or less at unsignalized intersections.

While Mr. Schmid found that all studied intersections will operate at a level of service D or better, the MD Route 24 at Ring Factor Road intersection is projected to operate with an intersection delay time nearing the limits of Level D service during weekday evening peak hours. While Mr. Schmid's report indicates that mitigation is not required, the developer has nevertheless agreed to construct a westbound left/through lane, and an exclusive right turn lane from Ring Factory Road. With this proposed addition the westbound approach level of service will be significantly improved, with the overall intersection delay time reduced.

The dedicated right turn lane is shown on Applicant's site plan, and is designed to hold eight cars, with an additional 100 foot taper beyond that. Mr. Schmid believes that this road improvement will fully mitigate the traffic impact of the proposed special exception.

Upon cross-examination by interested neighbors, Mr. Schmid stated that the dedicated right turn lane from Ring Factory Road onto MD Route 24 north will not have a separate green arrow.

Mr. Schmid's Traffic Impact Study, dated July 2005, concluded by saying “. . . with the new lane use the westbound approach delay and the approach level of service will be significantly improved; more over the overall intersection delay time will be reduced.” The study further found that all key intersections meet the Harford County level of service requirements.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that the proposal is subject to a 50 foot use setback from adjoining residential lots.

Mr. McClune further feels, echoing the conclusion of the Staff Report, that all requirements of Section 267-9I of the Harford County Code can be met. The building itself will be well screened on the north, west and south sides. Only in the winter would a passer-by be able to see any portion of the building from any of these directions. However, private residences exist on the eastern side of the property, which is the side of the property which will be cleared for parking. Mr. McClune would support a reduction in the proposed parking on the eastern side of the property in order to maintain additional forest buffer in its natural state. The Department of Planning and Zoning, according to Mr. McClune, is looking for more than the minimum 10 foot buffer. The Department would also suggest that any required plantings in the area along the eastern side of the property be 2-1/2 to 3 inch caliber trees at the time of planting. These substantial plantings should help minimize the impact on the residences in that area.

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Mr. McClune also recommends that the appearance of the buildings generally comply with the Concept Plan submitted by the Applicant during the hearing. The elimination of the parking row on the far eastern side of the property should add approximately 18 feet of buffer yard between the revised parking and the side yard lot line, as parking spaces are normally 18 feet deep, according to Mr. McClune.

Despite questioning some of the Applicant's witnesses, none of the neighbors or other affected property owners who were in the audience on the night of the hearing testified in opposition. When directly questioned, Jay Greer, who resides at 120 West Ring Factory Road, Bel Air, stated that he believed the proposed project will be better than the relatively high density, single-family residential development which could be otherwise constructed on the subject property. Mr. Greer's property is bordered and screened by mature white pines located on the subject property. He feels that if a 30 foot wide corridor of existing white pines were to remain, then his property would be well screened from the proposed use.

As stated above, there was no testimony or evidence presented in opposition to the proposed request.

APPLICABLE LAW:

Section 267-51 of the Harford County Code defines Purpose as:

"Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1."

Section 267-52 of the Harford County Code defines General regulations as:

- "A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.*
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. Extension of any use or activity permitted as a special exception shall require further Board approval."*

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Section 267-53F(7) of the Harford County Code allows:

“(7) Nursing homes and assisted living facilities. These uses may be granted in the AG, RR, R, R1, R2, VR, and B1 Districts, provided that:

- (a) A minimum parcel area of five acres is established and a maximum building coverage of 40% of the parcel is provided.*
- (b) The setbacks of the district for institutional uses shall be met.*
- (c) The density shall not exceed 20 beds per acre of the parcel.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is almost a thirteen (13) acre parcel, zoned R2, Urban Residential, and located at the north/northeast corner of the intersection of MD Route 24 and Ring Factory Road. The property is presently improved by a single-family residence. Access will be from Ring Factory Road at a point located approximately 750 feet from the intersection of MD Route 24. This assisted living facility will, when built out, have a total of 180 units, containing 214 beds. The project will be in two phases, to be constructed as market conditions allow.

The subject property contains some wetlands, and a small pond located off Ring Factory Road which will be maintained. Due to the topography of the site stormwater management facilities will be located both in the north and south sections of the property.

The proposed use of the site is distinguished by the Applicant's intent to maintain the fairly significant forest buffers along the south, west and north/northwestern sides of the property. Those buffers appear to extend for not less than two hundred (200) feet on those three sides of the property. As the buffers contain mature woodlands, it is unlikely that the assisted living facility will be readily visible from any of those directions. In the winter the buildings will be somewhat more visible, although the existing trees should tend to mitigate that impact.

The subject site is also a desirable one for the Applicant as the Applicant operates the Brightview Assisted Living Facility directly across MD Route 24 from the subject site. Public water and sewer is available to the property.

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The parcel can clearly meet the specific requirements of Section 267-53F(7) of the Code, which is the applicable Special Exception section.

First of all, the special exception may only be granted in specified zoning districts. The R2 District in which the subject property is located is an allowable district.

Furthermore, Subsection A of Section 267-53F(7) requires a minimum area of five (5) acres, and a maximum building coverage of 40%. The Applicant clearly meets the acreage requirement, having almost thirteen (13) acres available. The maximum building coverage of the parcel will be only 12.9%.

Subsection B of Section 267-53F(7) requires that setback of the district for institutional uses be met. The building setbacks are 50 feet front yard, 40 feet side yard, and 80 feet rear yard. A 50 foot use setback from adjacent residential lots is also required. According to the Applicant's site plan, these requirements are met by the Applicant.

Lastly, Subsection C of Section 267-53F(7) requires that the density not exceed twenty (20) beds per acre of the parcel. The site plan is for 214 beds total. Accordingly, this condition is satisfied.

However, even though the specific requirements of the applicable special exception regulations are met, the Applicant must also meet the more generalized, although nevertheless applicable, requirements of Section 267-9I, Limitations, Guides and Standards. The application of these standards raises two particular issues which must be specifically addressed. The first significant issue is traffic impact. The traffic on both Ring Factory and MD Route 24 can be best classified, in layman's language, as heavy and constant. This finding is certainly supported by the Traffic Impact Analysis of Mr. Schmid which finds that certain of the studied intersections to be operating a level of service "D". Level of service "D" is considered acceptable, although surely not desirable to the neighbors or to the people who must travel through those intersections during high traffic periods. Furthermore, certain specific lane movements operate at less than (worse than) level of service "D". While Mr. Schmid explained that while a particular lane movement may operate at less than at a level of service "D", this does not necessarily mean that the entire intersection operates at failing level. Nevertheless, one can surely conclude that certain lane movements at certain times which operate less than satisfactory levels of service, is a annoyance at the very least to the people who utilize those roadways.

However, there is no Code requirement that the Applicant mitigate all other impacts from whatever sources that may bear on affected intersections. Indeed, Mr. Schmid indicated, and the Department of Planning and Zoning did not contradict, that the Applicant has no obligation to complete any road improvements under present Adequate Public Facilities legislation.

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Nevertheless, the Applicant believes that the construction of a right-turn only lane on westbound Ring Factory Road at the intersection of MD Route 24 will mitigate the relatively slight impact which the proposed use will have on the adjacent roadways. That dedicated right-turn lane, for which a sufficient right-of-way now exists according to Mr. Schmid, will hold eight (8) cars with a 100 foot wide taper leading up to it. Mr. Schmid indicated that this right-turn only lane will also improve the functioning of this intersection by reducing projected wait times.

It is, accordingly, found that the proposed project will have an impact on the surrounding intersections. However the Applicant, by the proposed construction of the right-turn only lane, will mitigate, in an acceptable fashion, that anticipated impact. Clearly traffic is increasing throughout Harford County, including in Bel Air and the surrounding suburbs. The Applicant cannot be held responsible, at least at this level, for all traffic impact not generated by it. The Applicant is acting to mitigate its impact. This is sufficient to support a finding of no adverse impact on traffic conditions.

The next issue is that of the potential impact of the proposed use on the neighbors to the northeast of the property. Their residences are relatively close to the common property line, with Mr. Greer's house, according to the site plan, being located about twenty (20) feet from the common property line, and with that of Mr. and Mrs. Sweeney (Parcel 849, Lot 3) located about sixty (60) feet from the common property line. The Greer property has the potential of being most heavily impacted as it is relatively close to the proposed parking area, and it is now buffered by mature trees which the Applicant proposes, in part, to remove. When questioned, Mr. Greer stated that he was not opposed to the proposed use, although he indicated his preference was for the maintenance of the existing mature white pine screening that now exists on the subject property. If a buffer of at least 30 feet is maintained, including the existing white pines, Mr. Greer believes the impact on him will be minimal.¹

It is accordingly found that the impact of the proposed use on the Greer parcel and the other, northeast side residentially used lots can be either eliminated or, at least adequately mitigated by the maintenance of a 30 foot vegetative buffer area along the eastern property line of the parcel. Based on the testimony and evidence of record, it appears that such a buffer can be created by the elimination of a portion of parking proposed for the area, specifically by the elimination of that last row of parking nearest to the eastern most property line. The Applicant has indicated that it will suffer no adverse impact to its project if parking is reduced. Accordingly, a condition will be attached to this decision which requires the elimination of the last row of parking, and the maintenance of a 30 foot undisturbed tree buffer to remain in its natural state. With such a condition, any impact on the northeast side properties shall be adequately mitigated.

¹ Mr. Greer and others during the hearings expressed their acceptance of the proposed assisted living facility as it will not have as great an impact as potential single family or town house residential uses. Zoned R2 and being approximately thirteen (13) acres in size, the subject property would support a maximum gross density of as much as 4.5 residential units per acre.

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With those concerns having been specifically addressed, the Applicant can fully meet all of the requirements of Section 267-9I, as follows:

- (1) *The number of persons living or working in the immediate area.*

This area of Harford County contains numerous residential and commercial developments, with the immediate surrounding property being, for the most part, residential. There exists a need for this type of facility in Harford County, as explained by the Applicant. Accordingly, the proposed use would have no impact on the number of person living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

As discussed above, a Traffic Impact Analysis prepared by Mr. Schmid indicates no adverse impact on the studied roadways. The Applicant has proposed improvements to MD Route 24 and Ring Factory Road intersection. Those improvements will mitigate the impact on that intersection of the proposed use.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposed use is consistent with development in the area. There should be no adverse fiscal impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The proposed use should generate no such adverse impacts.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Maryland State Police will provide police protection. Bel Air Volunteer Fire Companies will provide fire protection. The property will be served by pubic water and sewer.

The Harford County Department of Health has also reviewed the request and has notified the Applicant that certain requirements must be met if it is to proceed with this project. Compliance with those conditions will be made a condition of this recommendation.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is permitted in the R2/Urban Residential District as a special exception. The proposed use meets all specific criteria. The request is consistent with generally accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed use is compatible with existing zoning, and Code requirements. The proposal, according to the Staff Report, is compatible with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

Wetlands exist across the front and rear of the site. These will be protected. Stormwater management facilities, as shown on the site plan, will be located to the front and rear of the property. The existing pond will be maintained. There should, accordingly, be no adverse impact on environmental features. No impact to recreation or open space has been suggested.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Finally, the proposal must be reviewed in light of the guidance given by Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). As a special exception, the proposed use shares the presumption that it is in the best interest of the general welfare and is accordingly presumptively valid. See Peoples Counsel v. Mangione, 85 Md. App. 738, 584 A.2d 1318 (1991). A special exception is analogous to a permitted use and is permitted in its particular district, provided all specific and general conditions are met.

Furthermore, and perhaps as importantly, there must be a finding that there is no greater harm at the proposed location than there would be, by this or a similar use, in any other permitted location within the zone.

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It is accordingly found, for reasons discussed in more detail above, that the proposed use, while it may have some visual impact at certain times of the year, will cause no more of an adverse impact at the proposed site than it would at any other location within the zone. Indeed, given the size of the parcel and existing vegetation, the impact should be less.

Unfortunately, given the state of intense and relatively fast development in Harford County today, no site or use is immune from the impact of traffic and visual impacts. The proposed use of the subject property is, however, clearly a more acceptable use than many others which could be made of that property, one which will have a lower traffic impact than other uses, and one which because of natural screening should have little visual impact on surrounding residences.

For these reasons, it is found that the use fully complies with the Schultz V. Pritts standard and will have no more adverse impact at this proposed site than any other in the zone. The actual impact should be minimal at best, while at the same time helping to meet an important public need.

CONCLUSION:

It is, accordingly, recommended that the request for a special exception be granted, subject to the following conditions:

1. The Applicant shall submit a detailed site plan to be reviewed by the Development Advisory Committee (DAC). The plans submitted to the Department of Planning and Zoning shall be in general compliance with the plan submitted to the Board; however the Department of Planning and Zoning may approve minor changes to the building configuration and parking layout. Landscaping and lighting plans shall also be submitted for review and approval by the Department of Planning and Zoning.
2. A final Traffic Impact Analysis shall be submitted at the time of site plan approval. The applicant shall construct a westbound left/through lane and an exclusive right turn lane from Ring Factory Road at the intersection of MD Route 24 and Ring Factory Road.
3. The Applicant shall submit an architectural rendering of the proposed building to the Department of Planning and Zoning for review and approval. The Applicant shall obtain all necessary permits and approvals for the development and construction of the facility.
4. The improvements shall be constructed in general compliance with the conceptual rendering offered by the Applicant during the hearing.

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5. The Applicant shall maintain a 30 (thirty) foot undisturbed buffer along the entire north/northeast boundary of the property, which is the side adjoining the residential properties owned by Mr. Greer and others. It is acknowledged that this may require the elimination of the last proposed set of parking spaces on the east side of the property, which the Applicant had indicated could be done without affecting its ability to meet the required parking. Furthermore, the buffer shall be supplemented with the planting of 2-1/2 to 3 inch caliber trees to the extent necessary to fully screen the adjoining residential properties from view of the proposed assisted living facility.
6. The Applicant shall fully comply with all Harford County Health Department Regulations.

Date: November 9, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on DECEMBER 12, 2005.